

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

REBECCA LIVOTI

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VS.

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CIVIL ACTION NO. 3:21-cv-29

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**ANTHONY LIVOTI, PETER
CAMMARANO AND CHAPELWOOD
UNITED METHODIST CHURCH,
LAKE JACKSON, TX**

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NOTICE OF REMOVAL

Defendants, **ANTHONY LIVOTI, PETER CAMMARANO AND CHAPELWOOD UNITED METHODIST CHURCH** (“Defendants”), file this Notice of Removal. In support hereof, Defendants respectfully show the following:

The Grounds for Removal

1. This Court has original jurisdiction over this action under federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446. The action may be removed to this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446 because Plaintiff seeks relief for overtime pay under the Fair Labor Standards Act (“FLSA”), against her former employer, Chapelwood United Methodist Church (“CUMC”). 29 U.S.C. § 201 et seq. Co-Defendants, Anthony Livoti and Peter Cammarano, join and consent to the removal of this case to federal court. 28 U.S.C. 1446(b)(2)(A).

Federal Jurisdiction

2. On January 13, 2021, Plaintiff filed suit against Defendants, Anthony Livoti, Peter Cammarano and Chapelwood United Methodist Church, in the case styled *Rebecca Livoti*

v. Anthony Livoti, Peter Cammarano and Chapelwood United Methodist Church, Lake Jackson, TX; in the 149th Judicial District Court of Brazoria County, Texas.

3. Anthony Livoti was served on or about January 14, 2021. Peter Cammarano and Chapelwood United Methodist Church were served on or about January 20, 2021. Defendants filed an Original Answer and Application for Jury Trial on February 2, 2021.

4. Defendant CUMC employed Plaintiff as a substitute preschool teacher and eventually as a full-time employee. *See* Plaintiff's Original Petition, at ¶ 8. Plaintiff's employment was terminated on August 31, 2020. *Id.*, at ¶ 11. Plaintiff contends she is entitled to be paid overtime rates in accordance with federal law. *Id.*, at ¶ 15. Plaintiff further contends CUMC failed to pay Plaintiff the overtime rate for over 120 hours worked in 2019 and 2020. *Id.*, at ¶ 16. Accordingly, Plaintiff seeks relief from CUMC for overtime pay under the FLSA. The Supreme Court's decision in *Breuer* leaves no doubt Defendants may remove FLSA cases to federal court. *See Hurt v. Del Papa Distrib. Co., L.P.*, 425 F.Supp. 2d 853, 856 (S.D. Tex. 2004)(citing *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691 (2003)). Therefore, the federal court has original jurisdiction over Plaintiff's overtime claims against Defendant, CUMC.

5. The federal court also maintains supplemental jurisdiction over the state law claims Plaintiff asserts against Defendants, collectively, for defamation, and against CUMC for breach of contract related to the overtime claims. 28 U.S.C. § 1367(a); *see also, State Nat'l Ins. Co. v. Yates*, 391 F.3d 577, 579 (5th Cir. 2004). Plaintiff's defamation claim also allegedly derives from the termination of her employment. *Id.*, at ¶ 9 – 12.

6. Plaintiff is seeking monetary relief over \$250,000 and less than \$1,000,000.00.

7. The 30-day time frame within which Defendant CUMC is required by the laws of the United States, 28 U.S.C. § 1446(b)(3), to file this Notice of Removal has not yet expired, as

Plaintiff's suit was originally filed on January 13, 2021. Defendant, CUMC was served with process on January 20, 2021. Therefore, the deadline for CUMC to file its Notice of Removal does not expire until February 19, 2021, and this Notice of Removal is timely filed.

8. This court has subject matter jurisdiction over this civil action based on the federal question jurisdiction, under 28 U.S.C. § 1331. Therefore, this action is one which may be removed to this court by Defendants, pursuant to the provisions of 28 U.S.C. §1441(a). Based on the federal claim for overtime pay under the FLSA, this court has original subject matter jurisdiction over this civil action under 28 U.S.C. § 1331.

9. Venue is proper in this court under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in Brazoria County, which is in this district and division.

Compliance with Removal Procedures

10. In accordance with 28 U.S.C. § 1446(a), all of the process and pleadings served upon Defendants in this action to date are attached to this notice:

- a. Plaintiff's Original Petition (Exhibit 1);
- b. Defendants' Original Answer, Application for Jury Trial and Correspondence to the Court (Exhibit 2);

10. In accordance with Local Rule LR81, Defendants further attach executed copies of the following forms required for cases removed to the Southern District of Texas:

- c. Docket Sheet (Exhibit 3);
- d. An index of matters being filed (Exhibit 4);
- e. Civil Cover Sheet JS-44 (Exhibit 5); and
- f. A list of all counsel of record, including address, telephone numbers and parties represented (Exhibit 6).

11. As required by 28 U.S.C. § 1446(d), Defendants will promptly provide notice to Plaintiff and file a true and correct copy of this Notice of Removal with the clerk of the state court where this action has been pending.

Preservation of Defenses

12. By filing this Notice of Removal, Defendants do not waive any defense that may be available to them.

FOR THESE REASONS, Defendants, **ANTHONY LIVOTI, PETER CAMMARANO AND CHAPELWOOD UNITED METHODIST CHURCH**, pray this cause be removed to the United States District Court for the Southern District of Texas – Galveston Division, pursuant to 28 U.S.C. §1441(a).

Respectfully submitted,

By: /s/ David L. Miller
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all counsel of record via electronic transmission (ECF), certified mail, return receipt requested and/or facsimile, pursuant to Rule 5b, FED. R. CIV. P., on this 11th day of February 2021.

/s/ David L. Miller
David L. Miller / Diane F. Burgess